

CALIFORNIA STATE PERSONNEL BOARD MEETING
Los Angeles Airport Hilton
5711 West Century Boulevard
Los Angeles, California 90045-5631
(310) 410-4000 FAX (310) 410-6177

Public Session Location - Marina Room
Closed Session Location - Marina Room

FULL BOARD MEETING MINUTES**

APRIL 3, 2002

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. Senate Budget Subcommittee #4 considered the State Personnel Board budget on March 20, 2002. State Personnel Board staff responded to questions from the Subcommittee concerning the status of the bilingual services report and the impact of the 15%

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:

<http://www.spb.ca.gov/spbmeet/spbminrd.cfm>

budget reductions on the State Personnel Board recruitment and outreach functions. The budget was held open to permit the Subcommittee to consider future actions on the "Post and Promote" proposal.

- B. State Personnel Board staff met with staff of Senator Escutia's office and representatives of various community groups to discuss steps to improve the state's bilingual services program and possible amendments to SB 978 concerning bilingual services.

A follow-up meeting will be scheduled with community groups to further discuss the issues and review draft proposals.

- C. State Personnel Board and Department of Personnel Administration (DPA) staff had a follow-up meeting with staff of the Senate Budget Subcommittee and representatives of the Department of Finance and the Legislative Analyst office. The Subcommittee will ask DPA to report on the impact of the "Post and Bid" process on veterans, women, minorities, and persons with a disability and compare the appointments through this process with the composition of persons appointed through the merit based process. DPA will also be asked to provide information on any increase in employee counseling or adverse actions resulting from this process.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Litigation:

- A. Jacobs v. Department of Justice/State Personnel Board This case is currently pending before the Court of Appeal. Settlement fell through.
- B. Department of Corrections v. State Personnel Board/McCormick - We have received notice that McCormick intends to appeal that part of the superior court decision finding that charges were timely brought against McCormick.

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- C. Department of Corrections v. State Personnel Board/Johnson - Superior court issued a decision finding that the State Personnel Board has no authority to modify a penalty imposed against a manager if the charges are supported by substantial evidence.
- D. Teale v. State Personnel Board/Lopez - Superior court denied Teale's request that State Personnel Board's modification of discipline be stayed pending court's decision on their petition for writ of mandate challenging the State Personnel Board's decision.
- E. California State Employees Association/Kill v. Department of Corrections - The California State Employees Association is challenging the Department of Correction's failure to comply with the State Personnel Board's decision in this case and requesting court to enforce the decision.

Other

- A. State Personnel Board Chief Counsel Elise Rose has received 2 letters of appreciation (one from Employment Development Department and the other from Department of Justice Equal Opportunity Office) for presentations about State Personnel Board's State Employee Mediation Program(SEMP) made by Matilda Bannerman-Richter, Manager of State Personnel Board's SEMP. State Personnel Board President, Ron Alvarado requested copies of the letters be made available to the Board members. Other state agencies or state employee organizations interested in arranging a presentation for their own organization may call Ms. Bannerman-Richter, or her secretary Karen Silva.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A The Senate Budget Subcommittee #4 will hear the State Personnel Board's budget on April 10, 2002.

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- B. The Assembly Budget Subcommittee #4 will hear the State Personnel Board's budget on April 10, 2002.

The State Personnel Board voted on the following:

- A. AB 1950 (Wright) is sponsored by the State Personnel Board. The bill will allow departments to extend the probationary period for an employee with a disability, for the period of time needed to provide appropriate reasonable accommodation, so that the employee's performance can be fairly evaluated with the accommodation in place. **SUPPORT**
VOTE: Alavarado, Elkins, Bos - Aye.
- B. ABx3 1 (Oropeza) would amend the Budget Act of 2001 by revising various items of appropriations, as specified and authorizing the Director of Finance to revert additional amounts from specified funds to the General Fund. **NEUTRAL**
VOTE: Alvarado, Elkins, Bos - Aye.
- C. AB 2497 (Negrete McLeod) would authorize a California State University employee who is rejected during a probationary period to appeal that rejection to the State Personnel Board. **SUPPORT IF AMENDED** to make it clear that State Personnel Board will follow the same procedures and apply the same standards as it now follows and applies when reviewing such appeals filed by state civil service employees.
VOTE: Alavarado, Elkins, Bos - Aye.
- D. SB 1538 (Burton) would prohibit predispute arbitration provisions that limit an employee's remedies under the Fair Employment and Housing Act to redress employment discrimination. **SUPPORT IF AMENDED** to prevent a comparable waiver of employment discrimination remedies before the State Personnel Board and to clarify that the bill applies to negotiated memoranda of understanding as well as to written employment agreements.
VOTE: Alvarado, Elkins, Bos - Aye.

5. ORAL ARGUMENT

Oral argument in the matter of MIKE DORRI, CASE NO. 00-2927. Appeal from rejection during probationary period. Department of Transportation.

Persons Participating:

Patrick Barney, Deputy Attorney, representing Department of Transportation
Stephen Beck, Staff Consultant, Professional Engineers in California Government, representing appellant

ACTION: Submitted

BOARD ACTIONS

6. STATE PERSONNEL BOARD SUMMARY MINUTES OF MARCH 19, 2002

ACTION: Adopted on April 3, 2002.

VOTE: Alvarado, Elkins, Bos - Aye.

7. ACTION ON SUBMITTED ITEMS

ACTION: See pages 13-14.

8. ADMINISTRATIVE LAW JUDGE CASES

On April 3, 2002, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

REJECTED AND REMANDED DECISION

NANCY CHAN, CASE NO. 01-3154

Appeal from automatic resignation
Office Assistant (Typing)

Employment Development Department

ACTION: Automatic resignation revoked

PROPOSED DECISIONS

April 3, 2002

JAMES AARON III, CASE NO. 01-4114

Appeal from rejection during
probationary period

Peace Officer I

Porterville - Developmental Center

Department of Developmental Services

ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself

KENNETH CARTER, CASE NO. 01-4241

Appeal from official reprimand

Vocational Instructor (Correctional Facility)

Norco - California Rehabilitation Center

Department of Corrections

ACTION: Official reprimand sustained

GRACE CARUTH, CASE NO. 01-1004

Appeal from rejection during
probationary period

Health Records Technician I

San Jose - Developmental Center

Department of Developmental Services

ACTION: Rejection during probationary period sustained

LEANDRO CORREIA, CASE NO. 02-0043

Appeal from rejection during
Probationary period

Construction Supervisor I

Department of General Services

ACTION: Rejection during probationary period sustained

BRENDA CURTIS, CASE NO. 01-2438

Appeal from one salary grade
reduction for ten months

Communications Operator

Department of California Highway Patrol

ACTION: One salary grade reduction for ten months
sustained

DANIEL ESQUIVEL, CASE NO. 01-2866

Appeal from dismissal

Correctional Officer

Ontario - Southern Transportation Unit

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Department of Corrections

ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself

MARSHALL HAVNER, CASE NO. 01-3111B

Appeal for determination of back salary,
benefits, and interest after reinstatement
Psychiatric Technician

Porterville - Developmental Center

Department of Developmental Services

ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself

RICHARD A. KALEY, JR., CASE NO. 00-1452B

Appeal for determination of back salary,
benefits, and interest after five calendar
days suspension

Correctional Officer

Represa - California State Prison

Department of Corrections

ACTION: Back salary, benefits, and interest after five
calendar days suspension awarded

JACQUELINE LEWIS, CASE NO. 01-3376

Appeal from official reprimand

Correctional Officer

Salinas - California State Prison

Department of Corrections

FERNANDO MORALES-CASTILLO, CASE NO. 01-3353

Appeal from termination without fault from temporary
appointment (TAU)

Employment Program Representative

Employment Development Department

LEWIS ROPER, CASE NO. 01-1337E

Appeal from discrimination complaint

made against the Commission on

Peace Officer Standards and Training

ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself

KENT TWEEDY, CASE NO. 01-3105

Appeal from dismissal

Caltrans Highway Maintenance Worker

Department of Transportation

ANGEL VILLALOBOS, CASE NO. 01-1642
Appeal from dismissal
Youth Correctional Officer
Norwalk - Reception Center and Clinic
Department of the Youth Authority
ACTION: Dismissal sustained

PETITIONS FOR REHEARING

JANET HARNDEN, CASE NO. 01-0006P
Appeal from discrimination on the basis
of religion
Office Services Supervisor I (General)
Susanville - State Prison
Department of Corrections
ACTION: Petition for rehearing filed by respondent
denied

PETITIONS FOR REHEARING, NOTICE OF FINDINGS

RICHARD KRUPP, CASE NO. 01-2338
Appeal from whistleblower retaliation
Staff Services Manager II
Department of Corrections
ACTION: Petition for rehearing denied and Board adopts
Executive Officer Notice of Findings as it's final
decision

9. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 15-20.

10. WITHHOLD APPEALS
On April 3, 2002, the Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.
VOTE: Alvarado, Elkins, Bos - Aye.

ERIK FARALDO, CASE NO. 01-0679
Classification: Parole Agent I, Adult Parole

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Department of Corrections

ACTION: DENIED

TAUMAIA LEALOFI, CASE NO. 01-2329

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

PAUL MICHAELS, CASE NO. 01-2179

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

BUDDIE MINNICK, CASE NO. 01-2499

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

PEGGY MURILLO, CASE NO. 01-3144

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

11. MEDICAL APPEALS

On April 3, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

THOMAS BISGROVE, CASE NO. 01-2807

Classification: Cadet, CHP

California Highway Patrol

ACTION: DISMISSED

THOMAS BOMAR, CASE NO. 02-0346

Classification: Cadet, CHP

California Highway Patrol

ACTION: GRANTED

GLENN COSTELLO, CASE NO. 02-0280

Classification: Hospital Peace Officer I

Department of Mental Health

ACTION: GRANTED

GREGORY DILLON, CASE NO. 01-3000
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

BENJAMIN GALARZA, CASE NO. 01-1405
Classification: Parole Agent I, Adult Parole
State Personnel Board
ACTION: DENIED

BENJAMIN GROSSMAN, CASE NO. 01-3511
Cadet, CHP
California Highway Patrol
ACTION: DENIED

ROBERT HAMMOND, CASE NO. 02-0318
Classification: Special Investigator I
Franchise Tax Board
ACTION: GRANTED

TONYA KIDD, CASE NO. 01-4015
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: GRANTED

ANTJUAN MARTIN, CASE NO. 01-0693
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: GRANTED

HOWARD MURAKAMI, CASE NO. 02-0493
Classification: Medical Technical Assistant-CF
Department of Corrections
ACTION: GRANTED

JASON NOBLETT, CASE NO. 01-3097
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

SHARLA RUSSELL, CASE NO. 01-2520
Classification: Youth Correctional Counselor
Department of the Youth Authority
ACTION: DENIED

IAN VASBINDER, CASE NO. 01-3047
Classification: Cadet, CHP

California Highway Patrol
ACTION: GRANTED

KYLE WILLIAMS, CASE NO. 01-4005
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

CHRISTINE ZAMORA, CASE NO. 01-4004
Classification: Cadet, CHP
California Highway Patrol
ACTION: GRANTED

12. EXAMINATION APPEALS

On April 3, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.
VOTE: Alvarado, Elkins, Bos - Aye.

(Examination)

(Group Appeal)

BENNY AGUILAR, CASE NO. 01-1167, 01-1169, 01-1170, 01-1171; THOMAS BENSON, 01-1193, 01-1194, 01-1195, 01-1196; GARRETT NEEDLES, 01-0901, 01-0902, 01-0903; CHRISTOPHER PAYETTE, 01-0929, 01-0930, 01-0931, 01-0932; TIM TEALE, 01-1201, 01-1202, 01-1203, 01-1204
Classification: Fire Fighter II, Fire Fighter II, (Paramedic), Fire Apparatus Engineer, Fire Apparatus Engineer (Paramedic)
Department of Forestry and Fire Protection
ACTION: GRANTED

(Group Appeal)

VICTOR ALMAGER, CASE NO. 00-2926G; RICHARD ALVARADO, 00-2919G; ANTONIO BARRON, 00-3072G; IVAN CLAY, 00-3194G; JOHN DRESBACH, 00-2944G; TRUMAN DURLEY, 00-3046G; SHIRLEY FELSKE, 00-3059G; ERIC FLAMER, 00-2847G; SYLVIA GARCIA, 00-2970G; ARTHUR GODFREY, 00-3039G; ARTHUR GOMEZ, 00-3067G; FERNANDO GONZALEZ, 00-3056G; JOSEPH GONZALEZ,

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00-3036G; LARRY GRAY, 00-3071G; KARLTON GREEN, 00-2841G;
KELLY HARRINGTON, 00-2925G; CHARLES HOLLIS, 00-3066G;
TINA HORNBEAK, 00-3057G; BOB KARR, 00-2849G; MARY
LATTIMORE,
00-3040G; LUIS LOBATOZ, 00-3061G; RAYLENE LOMONACO,
00-3035G; ANDREW LOPEZ, 00-3070G; MARSHA MARSHALL, 00-
3042G; NANCY MCCLURE, 00-2842G; ROLANDO MEJIA, 00-3144G;
MARK MIRVISS, 00-2921G; MITCHELL MONTERIO, 00-3060G;
DENNIS MORRIS, 00-3058G; GEORGE MOSQUEDA, 00-3044G;
PATRICK O'CONNOR, 00-3038G; ROBERT OYAS, 00-2916G; PAUL
PALMER
00-2943G; BARTON POWELL, 00-2901G; HENRY PROVENCHER,
00-3043G; VALERIE QUINN-ROBICHEAUX, 00-3041G; SHARON
RANSELL, 00-2971G; MARIO REYES, 00-2968G; CARLOS
ROUSTON, 00-2751G; DANIEL SMITH, 00-2829G; DIANA SMITH,
00-3069G; MICHAEL TEICHNER, 00-2969G; ARTHUR TOMASETTI,
00-2920G; DENNIS TRAVERS, 00-2972G; ROBERT TRIMBLE, 00-
2939G; RICHARD VALDEZ, 00-3068G; W. WILLIAMS, 00-2848G;
MARK WITCHER,
00-3139G; TOBY WONG, 00-2828G
Classification: Correctional Administrator, CDC
Department of Corrections
ACTION: GRANTED

KAMI KESZLER, CASE NO. 00-2748
Classification: Industrial Relations Counsel III
(Specialist)
Department of Industrial Relations
ACTION: DENIED

JUSTIN MORANVILLE, CASE NO. 01-3352
Classification: Pre-Licensed Psychiatric Technician
Department of Mental Health
ACTION: DENIED

WALTER NELSEN, CASE NO. 01-0707
Classification: Senior Special Agent-CF
Department of Corrections
ACTION: DENIED

MAURICE VILLINES, CASE NO. 00-3603
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

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13. REQUEST TO FILE CHARGES CASES

On April 3, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

(Request to File Charges)

GLORIA MACIAS, CASE NO. 01-1375

Classification: An employee of the Department of Consumer Affairs

ACTION: DENIED

14 . CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) DISTRICT DIRECTOR - SHASTA CASCADE SERVICE DISTRICT

The California Conservation Corps proposes to allocate the above position to the CEA category.

The District Director is chief administrator of the Shasta Cascade Service District and has overall responsibility for the day to day operations of the 24-hour/day residential fire center facility, one non-resident base facility, and three satellite operations encompassing over eight counties. The department indicates that the position is at the second organizational level and will report to the Chief Deputy Director.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. State Personnel Board proposes regulations to clarify and codify the process for filing, processing, hearing, and deciding complaints of Whistleblower Retaliation in State Service. (Hearing held February 7, 2002).

NO ACTION

2. State Personnel Board proposes regulations to clarify the Discovery Process that will apply to evidentiary hearings concerning specified complaints or appeals, in some cases also involving alleged discrimination or retaliation. (Hearing held February 7, 2002).

NO ACTION

3. STEPHEN J. SURTSHIN, CASE NO. 00-1724P AND 00-3176P. Appeal from two-step reduction in salary for six months. Department of Mental Health. (Written argument presented February 7, 2002).

ACTION: On April 3, 2002, adopted Board decision sustaining two-step reduction in salary for six months and revoking dismissal with backpay, benefits and interest.

VOTE: Alvarado, Elkins, Bos - Aye.

4. VICTOR FINK, CASE NO. 00-2363. Appeal from medical termination, demotion and transfer. California Highway Patrol. (Oral Argument held February 8, 2002).

ACTION: On April 3, 2002, adopted Board decision ordering reinstatement with backpay, benefits and interest.

VOTE: Alvarado, Elkins, Bos - Aye.

5. MICHAEL MACKENZIE, CASE NO. 00-1817. Appeal from demotion. California Department of Corrections. (Oral Argument held February 8, 2002).

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ACTION: On April 3, 2002, adopted Board decision modifying demotion to a two-step reduction in salary for three months and ordering backpay with benefits and interest.

VOTE: Alvarado, Elkins, Bos - Aye.

6. EVELYN YOUNG, CASE NO. 00-3017. Request to File Charges Appeal. Classification: Supervising Governmental Auditor I, Department of Aging. (Presented to Board February 8, 2002).

NO ACTION

7. STATE PERSONNEL BOARD STAFF'S REPORT ON THE STATUS OF THE STATE DISCRIMINATION COMPLAINT PROCESS. (Hearing held March 5, 2002).

NO ACTION

8. PSC NO. 01-09 (DPR)
Appeal of the Department of Pesticide Regulation (DPR) from the Executive Officer's November 8, 2001, Disapproval of Personal Services Contracts (Contracts) with PTRL West, Inc., Agricultural and Priority Pollutants Laboratories, Inc., and Battelle Memorial Institute, in response to the request for review submitted by the California Association of Professional Scientists (CAPS). (Hearing held March 5, 2002).

NO/ACTION

9. MARTIN GREENHALGH, CASE NO. 01-1055. Appeal from five-percent reduction in salary for 12 months. Department of Corrections. (Hearing held March 5, 2002).

NO ACTION

10. PETE REECE, CASE NO. 00-1605. Appeal from denial of request for reasonable accommodation. Department of State Compensation Insurance Fund. (Hearing held March 5, 2002).

NO ACTION

11. EVELYN YOUNG, CASE NO. 00-3016. Appeal from 15 working days suspension. Department of Aging. (Hearing held March 5, 2002).

NO ACTION

12. SENIOR VOCATIONAL REHABILITATION COUNSELOR (SAFETY)
The Department of Mental Health proposes to establish the class of Senior Vocational Rehabilitation Counselor (Safety) to define public protection duties performed and the special physical characteristics required of incumbents; and establishment of a 12-month probationary period. (Presented March 19, 2002).

NO ACTION

WITHDRAWN CASES

1. ARCHER LEVY, CASE NO. 01-1314. Appeal from withhold.
Classification: Correctional Officer. Department of
Corrections. (Presented January 8, 2002).
2. JOSE ZALDY OBAR, CASE NO. 01-0302. Appeal from withhold.
Classification: Correctional Officer. Department of
Corrections. (Presented January 8, 2002).
3. FRANK ROSA, CASE NO. 01-0629. Appeal from withhold.
Classification: Youth Correctional Officer. Department
of the Youth Authority. (Presented January 23, 2002).

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on April 3, 2002.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos - Aye.